CONFIDENTIAL COMMUNICATION
FROM COUNSEL

PROPOSED ACTION PLAN FOR OSHA IAQ/ETS RULEMAKING

1) **Introduction:** This outline proceeds on the belief that there is little likelihood of persuading OSHA to make a determination not to regulate workplace ETS in some manner. Equally important is the high probability of congressional action to address ETS if OSHA does not regulate ETS at all, through legislation either directly banning/regulating smoking or authorizing/requiring OSHA or EPA regulation of ETS. As a result, feasible alternative objectives should be sought that will minimize the impact of more burdensome government action.

2) **Primary Objective:** An OSHA standard that regulates Indoor Air Quality (IAQ) (including workplace ETS) without containing separate provisions singling out ETS exposure per se or smoking behavior/activity in the workplace. This could take the form of a standard relying principally on improved general ventilation and improved maintenance of ventilation systems. Conceptual elements of a ventilation-based IAQ standard could include the following:

   a. Provisions requiring employers to perform surveys of the workplace to identify indoor air contaminants present and to develop an overall plan for maintaining "acceptable" IAQ that includes the elements contained in b.-f., below.

   b. Provisions requiring places of employment covered by the standard to provide a single specified fresh air ventilation rate that OSHA concludes will substantially reduce levels of indoor air contaminants for common work areas. The 1989 ASHRAE standard would probably be the basis for such provisions.

   c. Provisions with specific requirements for ventilation system maintenance.

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d. Provisions for specified types of filtration equipment under certain circumstances (e.g., hard to ventilate or heavily contaminated areas).

e. Provisions allowing extended compliance periods and alternative interim compliance strategies (e.g., specified filtration equipment, more frequent maintenance) for older buildings that would require significant modifications of existing ventilation systems.

f. Provisions allowing alternative compliance strategies (e.g., specified filtration equipment, more frequent maintenance) for older, poorly ventilated buildings in which installation of replacement of ventilation systems meeting the standard would be infeasible.

For buildings in which the general ventilation improvements required by the standard prove infeasible, or as a possible alternative to compliance with such requirements, an OSHA standard might set certain IAQ parameters (e.g., CO_2 and particulate levels as IAQ surrogates; temperature and relative humidity levels) and allow employers discretion to select combinations of control strategies (e.g., ventilation, filtration, source control) to meet these parameters.

3) **Alternative Objective:** If OSHA decides that an IAQ standard similar to that described in 2), above, must also contain special provisions for ETS, the following provisions for accommodating smoking in the workplace should be considered:

A requirement that for "special circumstances," e.g., smoking lounges and other areas or situations designated in the standard in which particularly high levels of specified indoor air contaminants are likely to be present, employers must provide a higher ventilation rate (but not from a separate ventilation

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system) than would be required for common areas (based on the provisions of the 1989 ASHRAE standard) and/or provide special filtration systems for the particular contaminants present.

4) **Secondary Objective:** Avoidance of a standard that imposes an outright smoking ban in any form. Similarly, a standard that would require separately-ventilated (i.e., separate fresh air intake and exhaust) smoking areas (with or without enhanced ventilation rates) and the costs associated with such a standard would provide an incentive to many employers to impose an outright ban because extensive and very costly modifications to the HVAC systems of many buildings would be required. A requirement for enhanced ventilation of smoking areas, but without separate ventilation systems, while marginally less burdensome, would provide similar incentives for employer smoking bans.

5) **Probable OSHA Actions/Timetable:**

a.	Development of RFI/ANPR --	In progress
b.	Assistant Secretary/Policy Review Board clearance of RFI/ANPR --	May/June 1991
c.	Consultation with OMB --	May/June 1991
d.	Publication of RFI/ANPR --	June 1991
e.	Comment period --	90 - 120 days
f.	Publication of proposed standard --	Fall 1992 to Spring 1993
g.	Public hearings --	Spring/Summer 1993
h.	Final standard issued --	Fall/Winter 1994

6) **Necessary Steps for Achieving Industry Objectives:**

a. Prior to the issuance of the RFI/ANPR, evaluate the current OSHA rulemaking docket materials and determine critical deficiencies (April/May).

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b. Prior to the issuance of the RFI/ANPR, submit to the OSHA docket available evidence illustrating and supporting the primary objective for an OSHA standard, including evidence regarding low workplace ETS levels, effectiveness of ventilation, risks from other indoor air contaminants. Meet with OSHA as appropriate to discuss the submissions (April/May).

c. Prior to the issuance of the RFI/ANPR, develop and submit to OSHA a list of questions for inclusion in the RFI/ANPR designated to elicit information and data supporting (or at least relevant to) the primary objective. Meet with OSHA as appropriate to discuss the submissions (May).

d. Monitor the progress of the draft RFI/ANPR within the Labor Department, attempting to discern and, where possible and necessary, to provide relevant information regarding its content (April-June).

e. Continue to monitor the progress of the ASH litigation and its impact on OSHA decision-making (Ongoing).

f. Continue to monitor the progress of the NIOSH CIB and its impact on OSHA decision-making; consider meetings with OSHA officials to attempt to point out deficiencies of the CIB (April/May).

g. Monitor and, where appropriate to further the primary objective with respect to the OSHA rulemaking, participate in the congressional deliberations and proceeding on the IAQ bills (Ongoing).

h. Provide support in upcoming hearings to be conducted by Congressman Waxman on IAQ issues (Ongoing).

i. Continue to monitor EPA activities and the potential impact of those activities on OSHA decision-making (Ongoing).

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j. Evaluate the existing research on critical issues such as workplace ETS exposures, effectiveness of ventilation on reducing ETS levels, and risks from other indoor air contaminants (April/May).

k. Based on that evaluation, determine what additional research should be performed by or with the support of the industry and start work on these projects (May/June).

l. Discuss with OSHA the industry's research plans, elicit, where possible, OSHA's support for and involvement in those research activities, and initiate work on these OSHA-related projects (June/July).

m. Monitor closely the activities of ASHRAE and other key private organizations dealing with issues such as ventilation that may have an impact on OSHA's work on IAQ (Ongoing).

n. Maintain contact with OSTP to encourage the involvement of OSTP, as necessary, on critical issues of science (and science policy) (Ongoing).

o. Following the issuance of the RFI/ANPR, coordinate an industry submission to OSHA that responds to the issues raised and fully describes the industry's position on what an OSHA proposed standard should contain, together with supporting evidence (June/August).

Virtually all of the above tasks will require close coordination among the active participants in this multi-faceted project. It is essential that a process be established and maintained to achieve effective coordination, particularly with respect to agency and congressional contacts and submissions.

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